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Watsonville Newspapers, LLC, d/b/a Watsonville Register-Pajaronian and San Jose Newspaper Guild, Local 98, affiliated with the Newspaper Guild. Case 32-CA-15182

March 25, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Upon a charge filed by the Union on January 16, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 23, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 32–RC–4036. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On February 13, 1996, the General Counsel filed a Motion for Summary Judgment and memorandum in support. On February 15, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 11, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contentions in the representation proceeding in support of its objections to the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, the Respondent, a California corporation with an office and place of business in Watsonville, California, has been engaged in the publication of a daily newspaper of general circulation. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$200,000, subscribed to interstate news services, and advertised nationally sold products.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 21, 1995, the Union was certified on December 4, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate units:

Unit A:

All full-time and regular part-time employees employed in Respondent's business office, editorial department, advertising department and ad services department; excluding all other employees, guards, and supervisors as defined by the Act.

Unit B:

All full-time and regular part-time employees employed in Respondent's circulation department and mailroom; excluding all other employees, guards, and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About December 6, 1995, the Union, by letter, requested the Respondent to bargain, and since January 9, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 9, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, the Respondent has engaged in unfair labor practices

affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Watsonville Newspapers, LLC, d/b/a Watsonville Register-Pajaronian, Watsonville, California, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with San Jose Newspaper Guild, Local 98, affiliated with the Newspaper Guild, as the exclusive bargaining representative of the employees in the bargaining units.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate units with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Unit A:

All full-time and regular part-time employees employed in Respondent's business office, editorial department, advertising department and ad services department; excluding all other employees, guards, and supervisors as defined by the Act.

Unit B:

All full-time and regular part-time employees employed in Respondent's circulation department

- and mailroom; excluding all other employees. guards, and supervisors as defined by the Act.
- (b) Post at its facility in Watsonville, California, copies of the attached notice marked "Appendix."1 Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 25, 1996

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with San Jose Newspaper Guild, Local 98, affiliated with the Newspaper Guild, as the exclusive representative of the employees in the bargaining units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining units:

Unit A:

All full-time and regular part-time employees employed in our business office, editorial department, advertising department and ad services department; excluding all other employees, guards, and supervisors as defined by the Act.

Unit B:

All full-time and regular part-time employees employed in our circulation department and mailroom; excluding all other employees, guards, and supervisors as defined by the Act.

WATSONVILLE NEWSPAPERS, LLC, D/B/A WATSONVILLE REGISTER-PAJARONIAN